IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 647 of 1997
With
CRIMINAL APPEAL No. 760 of 1997
With
CRIMINAL APPEAL No. 819 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAMNABEN W/O.PARSIJI BHEMAJI KOLI - Appellant(s)
Versus
THE STATE OF GUJARAT - Opponent(s)

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Appearance :

In Cri. Appeal No. 647 of 1997

Ms. Shilpa R. Shah for the appellants.

In Cri. Appeals No. 760 & 819 of 1997

Mr. Haresh Joshi for Thakkar Associates

Mr. N.D. Gohil, A.P.P. in all the appeals.

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 04/10/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA)

1. All these three appeals are preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against the judgment and order of conviction dated 30-6-1997 passed by the learned Addl. Sessions Judge, Banaskantha at Palanpur in Sessions Case No. 23 of 1997 by which appellants - accused No. 1 Bhemaji Gokalji Koli and accused No.7 Jamnaben wd/o deceased Parasji Bhemaji Koli of Criminal Appeals No. 819 of 1997 and 647 of 1997 respectively have been convicted for the offences punishable u/s 302 read with Section 34 of the I.P. Code and sentenced to undergo life imprisonment and to pay fine of Rs.5000/- each in default, to undergo simple imprisonment of one year. Appellant accused No.1 Bhemaji Gokalji Koli was also convicted for the offences punishable u/s 506 (2) of the I.P. Code and sentenced to undergo

rigorous imprisonment of seven years and to pay fine of Rs.2000/-, in default to undergo simple imprisonment of six months. The appellant was also convicted for the offence punishable u/ss 344 and 201 read with Section 34 of the I.P. Code and sentenced to undergo rigorous imprisonment for three years and to pay fine of Rs.1000/-, in default, to undergo simple imprisonment of three months for the offence punishable u/s 344 of the I.P. Code and to undergo rigorous imprisonment of seven years and to pay fine of Rs.2000/-, in default, to undergo simple imprisonment for one year for the offence punishable u/s 201 read with Section 34 of the I.P. Code. The sentences were to run consecutively.

2. The appellants of Criminal Appeal No. 760 of 1997 original accused No.2 Jamtaji Gokalji Koli, original accused No. 3 Bhuraji Gokalji

Koli, original accused No. 4 Rameshji Gokalji Koli, original accused No. 5 Khemaji Ishwarji Koli, original accused NO.6 Bhamraji Ishwarji Koli, original accused No. 8 Bhagwanji Maghaji Koli and original accused No.9 Popatji Maghaji Koli were convicted for the offences punishable under Section 201 read with Section 34 of the I.P. Code and sentenced to undergo rigorous imprisonment for seven years and to pay fine of Rs.2000/- each, in default, to undergo simple imprisonment of one year by the impugned judgment.

3. The facts, in nutshell, emerging from the prosecution case are that deceased Parasji was the husband of appellant (original accused No.7) Jamnaben and son of appellant (original accused No.1) Bhemaji Gokalji and informant Paruben. It is alleged that appellant Jamnaben had illicit relations with her father-in-law appellant (original accused No. 1) Bhemaji.

Deceased Parasji came to know about such illicit relations, therefore, there was altercation between Parasji and appellant Bhemaji and thereafter Parasji started living separately with his wife appellant Jamnaben. On 4-9-1996 appellant (original accused No. 9) Popatji Maghaji son in law of informant Paruben Bhemaji had come to the house of Paruben. At about 12-00 at midnight, informant Paruben and her children went to sleep in their house situated in the field and her husband appellant Bhemaji slept in the court yard of the house in the field. Deceased Parasji and his wife appellant Jamnaben slept in their field. On the next day i.e. 5-9-1996 in the morning at about 5-00 O'clock appellant Jamnaben came to the house of Paruben and informed that Parasji is dead. Therefore, Paruben awoke appellant Bhemaji whose clothes were blood stained and informed

him that Parasji is dead. Thereafter, she went to the field where Parasji was lying dead with multiple injuries and started crying. Appellant (original accused No.9) Popatji Maghaji, Paruben, her daughter Chikuben, appellant (original accused No.6) Bhamraji and his wife Sonaben also came at the place where dead body of Parasji was lying. It is also the case of the prosecution that as Paruben was crying appellant Bhemaji Gokalji gave threats to kill her if she cried. Paruben saw four iron 'katariyas' and one spear near the cot where Parasji was sleeping. Thereafter, dead body of Parasji was brought to the house where appellants Bhuraji Gokalji (original accused No.3), Khemaji Ishwarji (original accused No.5), Bhamraji Ishwarji (original accused NO.6) also came there. The villagers were called to take the dead body for funeral. Koli Mala Rasi came

there and after looking at the dead body of Parasji went to the village and informed that Parasji has not died a natural death but he was killed. Appellant Popatji Maghaji went to village and called appellants Jamtaji Gokalji (original accused No.2), Bhuraji Gokalji (original accused No.3) and Rameshji Gokalji (Original accused No.4). The villagers advised to lodge a complaint and so Paruben was locked inside the house as she told appellant Bhemaji to lodge a complaint. Thereafter, at about 10-00 O'clock in the morning appellants Bhemaji Gokalji, Rameshji Gokalji, Jamtaji Gokalji, Bhuraji Gokalji, Khemaji Ishwarji and Bhamraji Ishwarji consigned to flame the dead body of Parasji with blood stained clothes. After, about eleven days of the incident appellant Popatji Maghaji and Bhagwanji Maghaji (original accused No.8) came to take appellant

Jamnaben but appellant Bhemaji Gokalji did not send her with them. Thereafter, about 40 persons of their caste came from Shergarh and took appellant Jamnaben to her parental house. It is further the case of the prosecution that thereafter on 22-9-1996 appellant Bhemaji went to jungle as he got scared as a jeep passed near their house. Paruben took advantage of this opportunity and went to her parental house at village Kakvada from Malpuriya and informed her brother Teja Samta and uncle Hamira Vana and gave typed application to the District Superintendent of Police, Banaskantha at Palanpur on 22-9-1996 and F.I.R. was lodged on 1-10-1996 and investigation was started.

4. During the course of the investigation, the accused were arrested. On completion of the investigation, charge sheet was laid

before the learned Judicial Magistrate, First Class, Dhanera for the offences punishable u/ss 302, 506 (2), 344 and 201 of the I.P. Code. As the offence was triable by the Sessions Court, the case was committed to the Sessions Court, Banaskantha at Palanpur and it was registered as Sessions Case No.23 of 1997. Learned Addl. Sessions Judge, Banaskantha at Palanpur framed charge Exh. 3 against the accused and the same was read over and explained to the accused who pleaded not guilty to the charge and claimed to be tried. Therefore, the prosecution adduced evidence to prove the charge levelled against the accused. On completion of recording of evidence by prosecution the learned trial Judge explained to the accused the incriminating circumstances appearing against them in the evidence. The accused denied having committed the office

in their further statements recorded u/s 313 of the Code of Criminal Procedure, 1973 and stated that they have been falsely implicated in the offence.

5. Appellant original accused No.1 Bhemaji in his further statement explained that his son Parasji was staying separately with his wife and was independently cultivating. On hearing the news of death of his son he went to the field and saw dead body of Parasji. He did not notice any external injury on his dead body but there were marks of snake bite on his left leg. He further stated that there are instances of snake bite as they are staying in jungle; that he lifted the dead body and brought home that he and his brothers were mentally disturbed as his young son had died; that the villagers advised him to cremate the dead body, and therefore, the dead body was

consigned to flame. He further stated that his wife Paruben was frequently going to her maternal house and therefore she was rebuked as their young daughters were in the house which she did not like, that his relations with brothers-in-law are strained and therefore false case has been filed against him.

6. Appellant original accused No.7 Jamnaben in her further statement explained that she was staying separately with her husband; that on the night of the incident, she was sleeping in her house and her husband went to the field she woke up early in the morning but her husband did not return home, and therefore, she went to the field and noticed that her husband was lying near fence; that she called him but he did not speak and people gathered there as she raised shouts;

that thereafter, her father-in-law (appellant Bhemaji) informed that it looks that Parasji has died on account of snake bite and thereafter, dead body was brought home and their relatives and her parental relatives also came there.

7. After hearing the learned A.P.P. for the State and the learned advocate for the accused, the learned trial Judge found the accused guilty for the offences charged against them and sentenced them as stated hereinabove. The appellants have, therefore, challenged the judgment and order of conviction in these appeals.

8. As all the appeals arise out of the same judgment, the same have been heard together and are being disposed of by this common judgment.

9. We have heard the learned advocates for the appellants and the learned A.P.P. for the respondent State at length and in great detail. We have also perused the judgment of the trial court as well as the record and proceedings of the case.

10. Mr. Haresh Joshi learned advocate appearing for M/s. Thakkar Associate for the appellants of Criminal Appeals No. 760 and 819 of 1997 submitted that there is no eye witness to the incident and the entire case is based on circumstantial evidence. It is also submitted that the incident occurred on 4-9-1996 at late night and early morning of 5-9-1996 but the F.I.R. was lodged on 24-9-1996. Therefore, there is unexplained delay of 19 days. The application giving information of alleged offence was prepared

with the help of an advocate. Delay in filing the F.I.R. has been tried to be explained by stating that the informant and her daughter were confined in the house by appellant Bhemaji. But this explanation cannot be believed as she went out with other witnesses to answer nature's call. Therefore, she had sufficient opportunity to raise shouts for help and to lodge a complaint. It is also submitted that the F.I.R. was lodged with the help of the brother of the complainant and witnesses are not reliable witnesses as they are closely related to the deceased. He also submitted that the prosecution has tried to show that blood was found from the mattress and clothes of the appellant Bhemaji Gokalji after a period of 28 days. This fact raises suspicion about recovery of clothes as the appellant had sufficient time and opportunity to remove this evidence. He further submitted

that there is no evidence that the offence of murder has been committed, and therefore, the Court committed error in convicting the appellants for the offence punishable u/s 201 of the I.P. Code. The persons who took part in the funeral ceremony were illiterate village people and therefore it cannot be said that they acted with the intention of screening the offender from legal punishment by taking part in funeral. At the end, the learned advocate submitted that in a case of circumstantial evidence, the prosecution is required to establish all the pieces of incriminating circumstantial evidence are reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused and the accused cannot be convicted on the basis of suspicion and therefore the appellants are

required to be acquitted for the offences charged against them. He submitted that the prosecution has not proved the motive for the commission of the offence and there is no evidence to indicate that appellant Bhemaji Gokalji was last seen together with the deceased or was in the company of the deceased and therefore the conviction of the appellants is required to be set aside and Criminal Appeal Nos. 760 and 819 of 1997 are required to be allowed.

11. Mr. Shilpa R. Shah learned advocate appearing for the appellant Jamnaben of Criminal Appeal No. 647 of 1997 adopted the arguments advanced by learned advocate Mr. Joshi. She further submitted that if the prosecution case of alleged illicit relations of appellant Jamnaben with appellant Bhemaji is believed, then she would not have been

detained in the house as alleged by the prosecution. She also submitted that appellant Jamnaben was not sent to her parental house when four ladies members from her parental house came to offer condolences to the family but subsequently thereafter four to five days she was sent only when forty persons came to take her. This fact indicates that the appellant Jamnaben is falsely implicated in the offence and therefore Criminal Appeal No.647 of 1997 deserves to be allowed and the judgment and order of conviction of the appellant Jamnaben deserves to be set aside.

12. Learned A.P.P. Mr. N.D. Gohil vehemently opposed the appeals and submitted that the evidence indicates that appellant Jamnaben informed Paruben about the death of Parasji. Thereafter, Paruben informed her husband Bhemaji about the same fact, at that time

appellant Bhemaji Gokalji was found wearing blood stained clothes. The Panchanama of clothes of appellant Bhemaji indicates presence of blood stained marks which would indicate the involvement of the appellant Bhemaji in the offence. He also submitted that the motive behind the incident was illicit relations between appellant Bhemaji Gokalji and appellant Jamnaben. He also submitted that other appellants helped appellant Bhemaji in disposing of the dead body, thereby the appellants have screened the offender from legal punishment, and the prosecution has proved beyond reasonable doubt the charge levelled against the appellants. Therefore, no interference is warranted in the impugned judgment and order of conviction and all these appeals are required to be dismissed.

13. It appears from the prosecution case that

all the appellants are related to each other. Appellant Bhemaji Gokalji is the father of deceased Parasji, appellants Jamtaji Gokalji, Bhuraji Gokalji and Rameshji are the brothers and appellants Khemaji Ishwarji and Bhamraji Iswharji are the cousin brothers of appellant Bhemaji. Appellant Jamnaben is the widow of Parasji and daughter-in-law of appellant Bhemaji Gokalji. Appellant Bhagwanji Maghaji is the brother of appellant Jamnaben and appellant Popatji Maghaji is the brother of appellant Jamnaben and son-in-law of appellant Bhemaji. Thus, all the family members of appellant Bhemaji Gokalji have been implicated in the offence. It is very significant that informant Paruben is the mother of deceased Parasji and wife of appellant Bhemaji.

14. In order to prove the charge against the

appellants accused the prosecution mainly relied on the evidence of P.W. 2 Paruben Bhemaji Exh.17 and P.W. 3 Chikuben Bhemaji Exh. 20 who were the mother and sister; respectively; of deceased Parasji. The prosecution did not produce any evidence to prove that the death of Parasji was homicidal. There is no evidence to indicate that Parasji had sustained injuries which resulted into his death as alleged by the prosecution. It is significant that the incident took place at intervening night of 4th September, 1996 and 5th September, 1996. The dead body was found in the early morning of 5-9-1996. It was consigned to flame with blood stained clothes. Therefore, there is no inquest panchanama or postmortem report to indicate that the deceased had sustained injuries and he died on account of such injuries. There is no evidence to indicate

that the appellant Bhemaji inflicted the alleged fatal injuries to deceased Parasji. In absence of any medical evidence, it would be difficult to believe that death of Parasji was homicidal in nature. The only evidence according to the prosecution is the panchanama of weapons Exh.26 and panchanama of cot and mattresses Exh. 47. F.S.L. Report Exh. 52 indicates that blood stained marks were found on the weapons. However, it does not indicate that the blood marks were of the deceased. Similarly, panchama Exh.47 indicates that only one spot of blood mark was found on the white cloth of mattress. It is significant that there was cover on the mattresses. However, that cover did not contain any blood stain mark. The oral version of P.W. 2 Paruben Exh. 17 and F.I.R. Exh. 41 indicates that there were multiple injuries on the dead body and there was

profuse bleeding. In view of this evidence, it would be difficult to believe that the mattress contained only one blood spot that too not on the cover but only on the mattress which would be beneath the cover. Therefore, it would be difficult to believe that deceased Parasji had multiple injuries on his body and was profusely bleeding. Therefore, in our view, the prosecution has miserably failed to prove that death of Parasji was homicidal in nature.

15. The Prosecution examined P.W.2 Paruben Bhemaji, mother of deceased Parasji and wife of appellant Bhemaji at Exh. 17. It appears from her testimony that appellant Jamnaben (original accused No. 7) was married to her son Parasji and there were illicit relations between appellant Bhemaji and appellant Jamnaben and on account of that there were

quarrels between his son Parasji and appellant Bhemaji. Therefore, deceased Parasji and appellant Jamnaben started residing separately adjoining to her house. It also appears from her evidence that on the night of the incident, the witness and her children slept in the house and appellant Bhemaji slept in the court yard of their house. It also appears that appellant Jamnaben and Parasji slept in their field and in the morning at about 7-00 O'clock Jamnaben informed her that Parasji had died. Therefore, the witness informed her husband appellant Bhemaji who was sleeping and found that his clothes were blood stained. The witness inquired about the same and thereafter she went to the field and noticed that her son was not in the cot but was lying in the field. The evidence of this witness also indicates that she had noticed blood stained marks on

the mattress and floor and the deceased was profusely bleeding from his head. She also noticed four “katariyas” and one blood stained spear near the cot. The evidence of this witness also indicates that she started crying and therefore appellant Bhemaji told her not to cry otherwise he would kill her. Her evidence also indicates that after taking the dead body to their house, she was locked inside the house as she insisted for lodging complaint and her daughter Chiku and appellant Jamnaben were also locked inside the house for 17 days but her another daughter Kali was preparing the meals outside the house and serving them inside the house. The evidence of this witness also indicates that they were not permitted to move out side the house except to answer nature's call and the witness noticed from the window appellant Bhemaji and other appellants taking the dead

body for funeral. The evidence also indicates that appellant Jamnaben was not permitted to go to her parental house when some women came to offer condolences but thereafter when more people came there she was allowed to go to her parental house. The evidence also indicates that P.W. 2 Paruben could escape when appellant Bhemaji came to the village to see the crop, and went to her parental house at Kakvada and thereafter with help of her brother Teja and uncle Hamira Vana gave an application Exh. 39 to the District Superintendent of Police, Banaskantha at Palanpur. It appears from the sequence of the events narrated by this witness that it is highly improbable that a witness would remain locked for such a long time when relatives and others visit to offer condolences to the parents of a deceased. It appears that this events have been stated

only with a view to explain the delay caused in lodging the F.I.R. The first information with regard to commission of the offence was given by application Exh. 39 on on 24-9-1996 i.e. at least after about 19 days. The application Exh. 39 and the oral version given by the witness indicates that P.W. 2 Paruben was permitted to go out of the house to answer nature's call. Therefore, it is difficult to believe that she did not raise shouts for help for such a long time. It is also difficult to swallow that when Jamnaben was accused of having illicit relations with appellant Bhemaji and an accomplice in the murder would be kept in confinement with the persons whose interest was contrary to her interest and would have enmity with her for causing death of their son and brother respectively. It is also difficult to believe that Jamnaben was not

allowed to go with her relatives when they came to offer condolences but subsequently she was allowed. If she was not allowed to go, in the first instance, her relatives would have taken steps to rescue her from appellant Bhemaji. It is significant that during all these days of confinement of P.W. 2 Paruben her another daughter Kali and other daughters were free and Kali was preparing food outside the house and was serving it to them inside the house. This evidence also indicates that had it been confinement of witness Paruben, Kali and other daughters could have informed other relatives about confinement of the witness. Therefore, it is difficult to believe that P.W. 2 Paruben was locked in the house with daughter P.W. 3 Chikuben and appellant Jamnaben. Further, it appears from the evidence that P.W. 2 Paruben and P.W. Chikuben noticed from the window

that appellant and other persons took the dead body for funeral. It is difficult to believe that she did not shout and inform others about their confinement. She would not be a mute onlooker. It is significant that according to the witness appellant Bhemaji used to remain outside the house after locking the witnesses inside the house. This evidence is also not believable. The entire story narrated by the witness looks highly improbable. It is difficult to believe that a mother whose young son is murdered would not raise shouts and inform others about the incident for such a long time. It is also difficult to believe that when she saw her husband's cloth with blood stained marks, she did not inform the people gathered at the place where dead body of Parasji was lying. It is also difficult to believe that other relatives who came to offer condolences did

not notice absence of Paruben as she was locked inside the house. In our view, the story of confinement is made out only with a view to explain delay in lodging the F.I.R.

16. In application Exh. 39 given by P.W. 2 Paruben to the police, she has alleged that on 22-9-1997 a jeep passed near their house and therefore appellant Bhemaji got scared and went to jungle and taking this opportunity, she left the village and came to her parental house. In the oral deposition, the witness stated that she escaped from the house and came to parental village as appellant Bhemaji went to the field to look after crop. If she was locked inside the house, how she could know as to where her husband has gone and how she could opened the door. “There is no explanation in this regard. Therefore, it is difficult to believe that Paruben was detained in the house which was locked from outside. It is also difficult to believe that when the motive behind the incident

was illicit relations between appellant Bhemaji and appellant Jamnaben, then why appellant Jamnaben would be locked inside the same house with other witnesses who had strong opposition against appellant Jamnaben as well as appellant Bhemaji. In our view, P.W. 2 Paruben is not telling the truth and her evidence does not inspire confidence. Therefore, now the question would be as to why she would falsely implicate her husband and close relatives in the offence.'

17. It appears from the explanation given by appellant Bhemaji in his further statement recorded u/s 313 of the Code of Criminal Procedure that there were disputes between him and P.W. 2 Paruben as she was in the habit of going to her parental house frequently and appellant Bhemaji rebuked her as he did not like this and therefore Paruben and her brothers have falsely implicated him. This explanation is supported by the deposition of P.W. 3 Chikuben Exh. 20 who is daughter of P.W. 2 Paruben and appellant Bhemaji. She has in her deposition

stated that before 1 ½ years of the incident appellant Bhemaji had driven her out with P.W. 2 Paruben, her sisters and deceased Parasji to their uncle's house at Kakvada where they stayed for about 5 to 6 days. In view of this, it becomes clear that there were disputes between appellant Bhemaji and P.W.2 Paruben, and so possibility of falsely implicating appellant Bhemaji in the offence cannot be ruled out. As discussed earlier. Appellants Jamtaji, Bhuraji and Rameshji are the brothers of appellant Bhemaji. Appellants Bhagwanji Maghaji and Popatji Maghaji are the brothers of appellant Jamnaben and appellant Popatji Maghaji was married to P.W. 3 Chikuben and thereby he was the son-in-law of appellant Bhemaji. Appellants Khemaji and Bhamaraji are the cousin brothers of appellant Bhemaji. Therefore, it becomes clear that the brothers and cousins brothers of appellant Jamanben are implicated in the offence with some purpose as P.W. 2 Paruben was suspecting illicit relations between appellants Bhemaji and Jamnaben. It appears from

the evidence that P.W. 3 Chikuben refused to go to her matrimonial house as her brother Parasji was killed. Therefore, P.W. 2 Paruben and P.W. 3 Chikuben had one or other grievance against appellants. In view of this, it becomes clear that the witnesses have implicated all the family members of appellant Bhemaji. Therefore, the evidence of P.W. 2 Paruben cannot be relied on to connect the appellants with the offence.

18. The application Exh. 39 contains the details of alleged incident. The allegations made in the application indicate that the informant has tried to explain the delay caused in giving the information with regard to the commission of non-cognisable offence. However, in our view, it is difficult to believe the explanation given for delay caused in lodging F.I.R. As discussed earlier informant whose young son has died unnatural death would not keep silence for such a long time, and therefore, the conduct of the informant is unusual. Moreover the application

does not indicate that other appellants who had taken part in funeral ceremony of the deceased were aware about unnatural death and involvement of appellants Bhemaji and Jamnaben in the alleged offence. Therefore, in our view, application Exh. 39 and deposition of P.W. 2 Paruben implicating all the appellants in the offence does not inspire confidence and no credence can be given to it.

19. The Prosecution examined P.W.3 Chikuben Bhemaji at Exh. 20 The witness is the daughter of P.W. 2 Paruben and appellant Bhemaji and the wife of appellant Popatji. It appears from her evidence that before 1 ½ years of the incident appellant Bhemaji had, after beating, driven out this witness Paruben, Parasji and her sisters to their uncle's house at Kakvada where they stayed for about 5 to 6 days. The evidence of this witness indicates that there was quarrel between Parasji and appellant Bhemaji and Parasji rebuked appellant Jamnaben as she went to jungle with appellant Bhemaji. But there is no

evidence with regard to this incident. Even P.W. 2 Paruben has also not deposed about this incident. Therefore, it is difficult to believe that any such incident had occurred and on that account there was quarrel between Parasji and appellant Bhemaji. The evidence of this witness indicates that she saw deceased Parasji lying in the field with multiple injuries and was profusely bleeding from his head. The evidence also indicates that other persons also came there as they started crying and therefore appellant Bhemaji whose clothes were blood stained told them that he would kill them. The evidence also indicates that she along with P.W. 2 Paruben and appellant Jamnaben were locked inside the house and the appellants took the dead body of Parasji for cremation which they saw from the window and that appellant Bhemaji did not allow them to go out and used to take them out to answer nature's call. The evidence also indicates that her other sisters Kali, Savi and Shobhana were in the court yard when dead body of Parasji was being taken for cremation but

she did not tell them to call any one. The evidence also indicates that she did not go to her matrimonial house as her brother Parasji was killed. In our view, this witness is also not telling the truth. If other sisters of the witness were free they would have informed others about locking of Paruben and Chikuben in the house by appellant Bhemaji. The witness saw from the window that dead body was being taken for cremation but she did not shout or try to inform the people that they were locked inside the house against their will. The evidence of this witness also indicates that she is not prepared to go to her matrimonial house. Therefore, it is quite obvious that she would support her mother P.W. 2 Paruben and try to implicate the relatives of her husband with a view to avoid going to her matrimonial house. Moreover, according to this witness they escaped as appellate Bhemaji went to the field which is contrary to the averments made in application Exh.39 and evidence of P.W. 2 Paruben. Therefore, in our view, the evidence of the

witness does not inspire confidence.

20. The prosecution also examined alleged independent witness P.W. 4 Malabhai Rashibhai at Exh. 21. It appears from his evidence that when he was returning home from the field in the morning at about 6-00 O'clock Rambha the daughter of appellant Khemaji Ishwarji met him on the road and informed that Parasji had died on account of electrocution. Thereafter, the witness went to the house of appellant Bhemaji where the father of appellant Bhemaji told him that Parasji had died on account of snake bite and requested him to join in funeral procession. However, the witness asked the appellant Bhemaji to lodge a compliant but appellant Bhemaji refused to lodge the compliant. Therefore, the witness refused to join the funeral procession as there were two different versions about death of Parasji. The evidence of the witness also indicates that when he reached at the house of appellant Bhemaji, Magha Harda, Punam Harda, Vala Jivraj and Nava Jivraj were present

and they decided to lodge complaint and started to go to police station. However, appellant Khemaji Ishwarji met them on the way and informed that dead body of Parasji has already been consigned to flame and therefore they did not lodge complaint. The evidence of the witness indicates that none of the appellants gave the witness the cause of death of Parasji. The persons who gave the cause of death were Rambha and the father of appellant Bhemaji. Therefore, it cannot be said that appellant Bhemaji gave two versions about death of Parasji. The evidence of this witness does not take prosecution case any further.

21. The prosecution examined panch witness P.W. 5 Sureshkuamr Ugchand at Exh. 23 to prove panchanama of discovery of weapon Exh. 26 but his evidence does not prove that the weapons discovered were used by appellate Bhemaji in commission of the offence.

22. The prosecution examined P.W. 6 Nawaji Jivraj at Exh. 27 to prove that appellant Bhemaji gave two versions about the death of Parasji. However, it does not indicate as to when such two versions were given. The evidence also indicates that the witness refused to attend the funeral unless the police was informed. However, the witness despite realising that he death was not natural did not go to lodge compliant. It is also very strange that the witness did not take any action to prevent the funeral. This conduct raises suspicion about its trustworthiness. Therefore, the evidence of this witness cannot be relied on.

23. The prosecution also examined P.W. 7 Vala Jivraj at Exh. 28. It appears from his evidence that when he started to go to his field in the morning on the day of incident, appellant Bhamraji Ishwarji met him on the way and informed that Parasji had died. Therefore, Madhu Hardas,

Punma Hardas, Kevla Hardas, Mala Rashi and Nava Jivraj gathered together. At that time, the father of appellant Bhemaji told them that Parasji had died on account of snake bite and thereafter immediately he told that Parasji died on account of electrocution. He also requested them to come for funeral but the witnesses refused as they suspected that the father of appellant Bhemaji is not telling the truth. The evidence of this witness is contrary to the evidence of P.W. 4 Malabhai Rashibhai Exh. 21. It appears from the evidence that when the father of Bhemaji informed them about the cause of death of Parasji, P.W. 4 Malabhai Rashibhai was also present there. Therefore, the evidence of the witnesses is contrary to each other and hence it cannot be believed that appellant Bhemaji gave different versions about cause of death of Parasji.

24. The prosecution examined P.W. 10 Tejaji Samtaji at Exh. 31 who is the brother of P.W. 2 Paruben. It appears from his evidence

that Paruben, her daughters Chikuben, Kali, and Shobha were driven out by appellant Bhemaji before some time of the incident and P.W. 2 Paruben informed him that they are driven out because appellant Bhemaji had illicit relations with appellant Jamnaben. The evidence of the witness indicates he and his brother went to the house of appellant Bhemaji for offering condolences. However, strangely P.W. 2 Paruben did not tell them anything about her confinement by appellant Bhemaji. It would be difficult to believe that a sister would not tell her brothers about confinement. It also appears that Paruben told the witness about the murder after 17 days of the incident. The evidence of this witness also indicates that appellant Bhemaji gave him two versions about the death. The witness is extensively cross-examined with regard to contradictions. Considering the overall evidence of this witness, in our view,

the evidence of this witness cannot be believed.

25. The prosecution produced panchanama of cot, mattress , house and house-hold and clothes of appellant Bhemaji at Exh.47. It indicates that the panchanama was drawn on 2-10-1996 between 15-30 and 17-30 hours. It indicates that blood stained marks were found on the cover of mattress and 'dhoti'. It would be difficult to believe that a person involved in such a serious offence would keep the blood stained 'dhoti' having sufficient opportunity to destroy the evidence of blood stained marks. Moreover, there is no evidence to indicate that the blood stained marks belonged to the blood group of the deceased. Therefore, in our view, there is no evidence to connect the appellants with the muddamal articles.

26. The prosecution did not produce any evidence to indicate that the appellants caused disappearance and gave false evidence to screen the offender as there is no evidence that the appellants took part in funeral knowing and believing that death of Parasji was unnatural and appellants Bhemaji and Jamnaben had committed his murder. Therefore, in our view, the prosecution miserably failed to prove the charge levelled against the appellants for causing disappearance of the evidence with a view to screen the offenders.

27. On reappreciation of the evidence it becomes clear that there is no direct evidence to connect the appellants with the offence. The entire case is based on the circumstantial evidence. The circumstances do not prove involvement of the appellants in the offence beyond reasonable doubt. The alleged offence took place during intervening night

of 4th September 1996 and 5th September 1996. However, the information with regard to the commission of offence was given on 24-9-1996 after about 19 days of the incident. The explanation offered for delay is not believable. The evidence of the main witnesses P.W. 2 Paruben and P.W. 3 Chikuben who are also related to the deceased is found to be not acceptable. It is true that the witnesses have deposed against their near relatives. However, in view of the fact that there was quarrel between appellant Bhemaji and P.W. 2, Paruben false implication of the appellants Bhemaji and Jamnaben in the offence cannot be ruled out. The prosecution failed to prove beyond reasonable doubt that death of Parasji was homicidal in nature. Therefore, the cumulative effect of the entire evidence would be that the prosecution failed to prove beyond reasonable doubt the guilt of the appellants. It is settled principle of law

that when there is no direct evidence to connect the accused with the offence and the case is solely based on the circumstantial evidence, the Court is required to be cautious to inflict punishment. In the case of circumstantial evidence, the prosecution is required to prove all the incriminating circumstances by reliable and clinching evidence with unbroken chain of circumstances. In this case, we have noticed that there are discrepancies in the evidence adduced by the prosecution and there is no reliable and clinching evidence to connect the appellants with the offence. Therefore, in our view, the appellants are required to be acquitted by giving them benefit of doubt.

. As far as appellant Bhemaji is concerned, the alleged motive behind the commission of the offence is illicit relations between appellant Bhemaji and appellant Jamnaben.

There is no reliable and cogent evidence produced by the prosecution to prove that there were illicit relations between appellant Bhemaji and Jamnaben. The prosecution has not produced any evidence in support of the motive behind the incident. Therefore, except the application Exh. 39 there is nothing against the appellant Jamnaben that she was involved in the offence of murder of her husband Parasji. Therefore, appellant Jamnaben cannot be convicted on the basis of such evidence.

20. For the forgoing reasons, all the three appeals are allowed and the judgment and order of conviction dated 30-6-1997 passed by the learned Addl. Sessions Judge, Banaskantha at Palanpur in Sessions Case No. 23 of 1997 is set aside. Original accused No.2 Jamtaji Gokalji Koli, original accused No. 3 Bhuraji Gokalji Koli, original accused No. 4 Rameshji Gokalji Koli, original accused No. 5 Khemaji Ishwarji

Koli, original accused NO.6 Bhamraji Ishwarji Koli, original accused No. 8 Bhagwanji Maghaji Koli and original accused No.9 Popatji Maghaji Koli - appellants of Criminal Appeal No.760 of 1997 and original original accused No.7 Jamnaben wd/o Parasiji Bhemaji Koli appellant of Criminal Appeal No. 647 of 1997 are acquitted for the offences charged against them by giving benefit of doubt and since they are on bail their bail bonds are cancelled.

30. Appellant Bhemaji Gokalji Koli original accused No.1 i.e. appellant of Criminal Appeal No. 819 of 1997 is acquitted for the offences charged against him by giving benefit of doubt and he is ordered to be set free forthwith, if he is not required in any other offence.

31 The fine, if paid, be returned to the appellant/s concerned. The muddamal be disposed of as directed by the trial court.

(A.L. Dave, J.)

(Bankim N. Mehta, J.)

/JVSatwara/